

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 20-0472V

UNPUBLISHED

AMY LANGE,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: October 27, 2021

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Tetanus Diphtheria acellular
Pertussis (Tdap) Vaccine; Shoulder
Injury Related to Vaccine
Administration (SIRVA)

*Leah VaSahnja Durant, Law Offices of Leah V. Durant, PLLC, Washington, DC, for
Petitioner.*

Sarah Christina Duncan, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On April 20, 2020, Amy Lange filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleges that she suffered a shoulder injury related to vaccine administration (“SIRVA”) as a result of a Tetanus (“Tdap”) vaccine that was administered to her on December 11, 2017. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On September 17, 2021, a ruling on entitlement was issued, finding Petitioner entitled to compensation for SIRVA. On October 26, 2021, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded (a) a lump sum

¹ Because this unpublished Decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

payment of \$85,000.00, representing compensation for pain and suffering; and (b) a lump sum payment of \$1,714.23, representing compensation for satisfaction of a Wisconsin Medicaid lien. Proffer at 2-3. In the Proffer, Respondent represented that Petitioner agrees with the proffered award. *Id.* at 2. Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner:**

- A. A lump sum payment of \$85,000.00, representing compensation for pain and suffering, in the form of a check payable to Petitioner; and**
- B. A lump sum payment of \$1,714.23, representing compensation for satisfaction of a Wisconsin Medicaid lien, payable jointly to Petitioner and**

**Security Health Plan
Badger Care Plus Medicaid Managed Care Program
1515 North Saint Joseph Avenue
PO Box 8000
Marshfield, WI 54449-8000
Account #SUB241098, Attn: Kay Frodl**

Petitioner agrees to endorse and mail this payment to Security Health Plan.

These amounts represent compensation for all damages that would be available under Section 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

<p>AMY LANGE,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>SECRETARY OF HEALTH AND HUMAN SERVICES,</p> <p style="text-align: center;">Respondent.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>No. 20-472V</p> <p>Chief Special Master Corcoran</p> <p>ECF</p>
--	---	--

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On April 20, 2020, Amy Lange (“petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34 (“Vaccine Act” or “Act”), alleging that she suffered from a “Shoulder Injury Related to Vaccine Administration (‘SIRVA’), resulting from adverse effects of a Tetanus (‘Tdap’) vaccination she received on December 11, 2017.” Petition at 1.

On April 6, 2021, the Chief Special Master issued an Order stating that if respondent had not “formally indicated how he intends to proceed in this case” by May 10, 2021, petitioner could file a motion for a ruling on the record. ECF No. 20 at 2. On May 10, 2021, the Secretary of Health and Human Services (“respondent”) filed a status report indicating that the case had recently been assigned to medical personnel at the Division of Injury Compensation Programs at the Department of Health and Human Services (“DICP”), and that respondent anticipated being able to file a status report regarding his position by June 9, 2021. ECF No. 21. The same day, petitioner filed a Motion for Ruling on the Record (“Motion”). ECF No. 23.

On June 15, 2021, respondent filed a **Vaccine Rule 4(c)** Report and Response to Petitioner's Motion for Ruling on the Record recommending that compensation be awarded. ECF No. 25. On September 17, 2021, the Chief Special Master entered a Ruling on Entitlement, finding petitioner entitled to Vaccine Act compensation for a Table SIRVA injury. ECF No. 26.

I. Items of Compensation

A. Pain and Suffering

Respondent proffers that petitioner should be awarded \$85,000.00 in actual pain and suffering. Petitioner agrees.

B. Medicaid Lien

Respondent proffers that petitioner should be awarded funds to satisfy a Wisconsin Medicaid lien through Security Health Plan, Badger Care Plus Medicaid Managed Care Program, 1515 North Saint Joseph Avenue, P.O. Box 8000, Marshfield, WI 54449-8000, Account #: SUB241098, Attn: Kay Frodl, in the amount of \$1,714.23. This sum represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the Security Health Plan may have against any individual as a result of any Medicaid payments the Security Health Plan has made to or on behalf of Amy Lange from the date of her eligibility for benefits through the date of December 11, 2017, under Title XIX of the Social Security Act.

These amounts represent all elements of compensation to which petitioner is entitled under **42 U.S.C. § 300aa-15(a)**. Petitioner agrees.

II. Form of the Award

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to petitioner should be made through a

lump sum payment as described below and requests that the Chief Special Master's decision and the Court's judgment award the following¹:

A. A lump sum payment of \$85,000.00, representing compensation for pain and suffering, in the form of a check payable to petitioner, Amy Lange; and

B. A lump sum payment of \$1,714.23, representing compensation for satisfaction of a Wisconsin Medicaid lien, payable jointly to petitioner and Security Health Plan.

Petitioner agrees to endorse and mail this payment to Security Health Plan.

III. Summary of Recommended Payments Following Judgment

A. Lump sum payable to petitioner, Amy Lange: **\$85,000.00**

B. Medicaid lien payable jointly to petitioner and Security Health Plan: **\$1,714.23**

Respectfully submitted,

BRIAN M. BOYNTON
Acting Assistant Attorney General

C. SALVATORE D'ALESSIO
Acting Director
Torts Branch, Civil Division

HEATHER L. PEARLMAN
Deputy Director
Torts Branch, Civil Division

DARRYL R. WISHARD
Assistant Director
Torts Branch, Civil Division

¹ Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future lost earnings and future pain and suffering.

s/ Sarah C. Duncan
SARAH C. DUNCAN
Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146
Tel: (202) 514-9729
Email: sarah.c.duncan@usdoj.gov

DATED: October 26, 2021